

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHEILA A. PATTON)	
Claimant)	
VS.)	
)	Docket No. 216,920
NEW HORIZONS OF PITTSBURG)	
Respondent)	
AND)	
)	
MEDICALODGES AFFILIATED)	
C/O LAHOOD & ASSOCIATES)	
Insurance Carrier)	

ORDER

Claimant asked for Appeals Board review of the preliminary hearing Order entered by Administrative Law Judge Steven J. Howard on November 25, 1996, that denied claimant's request for medical treatment.

ISSUES

The single issue before the Appeals Board is whether claimant's low back injury arose out of and in the course of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The issue raised by the claimant is an issue set forth in K.S.A. 1996 Supp. 44-534a that grants the Appeals Board jurisdiction to review a preliminary hearing Order.

The respondent admits claimant was injured while transferring a client from a shower chair to her bed on July 11, 1996. Respondent has provided claimant with appropriate workers compensation benefits to repair a hernia injury that resulted from that accident.

The dispute between the parties is whether claimant's current low back symptoms resulted from her July 11, 1996, work-related accident. Claimant testified at the preliminary hearing that she had pain not only in her groin area but also in her back area immediately after the July 11, 1996, accident. Furthermore, claimant testified that she told her supervisors and other management personnel employed by the respondent of the complaints in both of these areas. Additionally, claimant completed a Risk Management Report on the date of accident, July 11, 1996, that indicated she injured her left hip and the parts of her right hip.

The claimant, along with five representatives of the respondent, testified in person before the Administrative Law Judge at the preliminary hearing held on November 14, 1996. All of the witnesses that appeared for the respondent testified claimant made no complaints in regard to her back after the accident of July 11, 1996. In fact, the first time the claimant notified respondent she had suffered any injury as a result of that incident was on July 30, 1996. Judy Shideler, assistant director of nursing for the respondent, testified that on that date claimant personally came to her and requested medical treatment for a condition that the claimant described as a hernia. Ms. Shideler immediately referred claimant to Richard A. Gellender, D.O., in Pittsburg, Kansas, for examination and treatment. Dr. Gellender released claimant after his examination and noted that in his opinion she did not have a hernia. Thereafter, claimant sought medical treatment on her own from a Lane Lee, D.O., in Pittsburg, Kansas. Dr. Lee did diagnose a hernia and recommended surgery.

The respondent then referred the claimant to Moheb Hallaba, M.D., in Pittsburg, Kansas, for a second opinion. Dr. Hallaba also diagnosed claimant with a hernia. On August 16, 1996, Dr. Hallaba repaired a recurrent right inguinal hernia and explored for a possible left femoral hernia. Dr. Hallaba released claimant to return to light work on September 16, 1996, restricting her to office work with no lifting, pushing, or pulling.

Claimant also complained to Dr. Hallaba of back pain during her first visit on August 12, 1996. During her follow-up visits after the hernia repair, claimant continued to complain of lower back problems. Finally, on October 10, 1996, Dr. Hallaba decided to refer the claimant to an orthopedic physician for examination and treatment of her back. Dr. Hallaba opined "The pain in her back, of course, was a result of an injury she sustained at the nursing home." However, the respondent's insurance carrier refused to authorize a referral for claimant's back treatment.

Claimant also contends she terminated her employment on July 25, 1996, because she could no longer tolerate the pain. However, Bill York, program director for the respondent, contradicted claimant's testimony in this regard. Mr. York testified claimant

notified him on July 25, 1996, after she had been absent for two days because of a sick child, that she was going to terminate her employment because she was not performing the job she was taught in the orientation class. Sharon Hutchinson, claimant's supervisor after the July 11, 1996 incident, testified claimant did not complain of any physical problems while performing her regular work duties until she quit on July 25, 1996.

The Appeals Board is mindful that the Administrative Law Judge had the opportunity to personally observe all of the witnesses who testified at the preliminary hearing. However, the Appeals Board finds the greater weight of the evidence contained in the preliminary hearing record established that it is more probably true than not that claimant's back injury is also related to the July 11, 1996, work-related accident. In reaching this conclusion, the Appeals Board specifically points to claimant's testimony, the Risk Management Report completed by the claimant, claimant's consistent back complaints contained in the medical records, and Dr. Hallaba's opinion attributing claimant's back complaints to the work-related accident.

At the preliminary hearing, respondent stipulated that if claimant's back injury was found to be compensable, orthopedic physician, John Yost, M.D., would be an appropriate physician to examine and treat claimant. Therefore, the Appeals Board orders respondent to provide appropriate medical care and treatment for claimant's back injury with orthopedic physician, Dr. Yost.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Steven J. Howard dated November 25, 1996, should be and is reversed and the respondent is ordered to provide appropriate medical care and treatment for claimant's back injury with orthopedic physician, John Yost, M.D.

IT IS SO ORDERED.

Dated this ____ day of January 1997.

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Garry W. Lassman, Pittsburg, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director